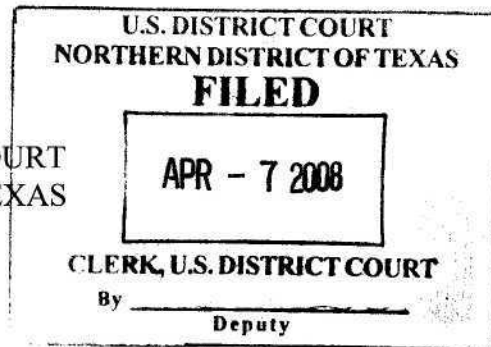


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

v.

CONOCOPHILLIPS COMPANY,

Defendant.

Civil Action No.

2-08CV-077-J

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") files this Complaint and alleges as follows:

1. This is a civil action for injunctive relief and civil penalties brought under Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, against Defendant ConocoPhillips Company ("ConocoPhillips") for the discharge of pollutants in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and in violation of the National Pollutant Discharge Elimination System ("NPDES") permit issued to ConocoPhillips pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the petroleum refinery and natural gas liquids fractionation facility operated by ConocoPhillips and located on State Road 119 approximately four miles northeast of Borger,

Texas in Hutchinson County (“the Borger refinery”).

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a), because this is a district where ConocoPhillips does business, and is the district where the Borger refinery is located and in which the alleged violations occurred.

4. Notice of the commencement of this action has been given to the State of Texas in accordance with Section 309(b) of the CWA, 33 U.S.C. §1319(b).

THE PARTIES

5. Plaintiff is the United States of America.

6. Defendant ConocoPhillips is a corporation that is organized under the laws of the State of Delaware and that does business in the State of Texas. Defendant operates a petroleum refinery and natural gas liquids fractionation facility located on State Road 119 approximately four miles northeast of Borger, Texas in Hutchinson County (“the Borger refinery”), at which the alleged violations occurred. Defendant, or its predecessors in interest, owned the Borger refinery from at least 1995 until January, 2007.

7. Defendant is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY AND REGULATORY PROVISIONS

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any

pollutant except as authorized by, and in compliance with, certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as: “[A]ny addition of any pollutant to navigable waters from any point source”

10. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, inter alia, sewage, biological materials, heat, industrial waste and chemical waste discharged into water.

11. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including the territorial seas.

12. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” as, inter alia, any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants may be discharged.

13. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue a permit, termed a National Pollutant Discharge Elimination System (“NPDES”) permit, that authorizes the discharge of pollutants, upon the condition that such discharge will meet the requirements of the CWA.

14. Pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, the Administrator is authorized to specify effluent limitations in NPDES permits. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), include, but are not limited to, restrictions on the quantity, rate, and concentration of chemical, physical,

biological, and other constituents of wastewater discharges.

15. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, and 40 C.F.R. § 122.41(l), the Administrator requires the holder of a NPDES permit to monitor and report the pollutant levels in its discharged wastewater. Such reports are referred to as Discharge Monitoring Reports (“DMRs”) and are required to be submitted to the EPA according to the time intervals specified in the NPDES permit.

16. Pursuant to 40 C.F.R. § 122.41(k)(1) and 40 C.F.R. § 122.22(a) and (b), a standard condition of all NPDES permits requires that all DMRs and non-compliance reports submitted to the Administrator be signed by a responsible executor or authorized agent of the organization that controls the point source. This executor or agent certifies by his or her signature that the reports are accurate.

GENERAL ALLEGATIONS

17. From at least 1995 to the present, Defendant, or its predecessor in interest, has operated a petroleum refinery and natural gas liquids fractionation facility located on State Road 119 approximately four miles northeast of Borger, Texas in Hutchinson County (“the Borger refinery”). Defendant, or its predecessor in interest, owned the Borger refinery from at least 1995 until January, 2007.

18. The Borger refinery is a facility with primary operations including crude oil refining and natural gas liquids processing, and associated storage and utility services.

19. From at least 1995 to the present, Defendant, or its predecessor in interest, has operated a wastewater treatment facility at the Borger refinery. From at least 1995 until January, 2007, Defendant, or its predecessor in interest, has owned a wastewater treatment facility at the

Borger refinery. Defendant is, therefore, an "owner or operator" of a "facility" within the meaning of 40 C.F.R. § 122.2.

20. From at least 1995 to the present, the Borger refinery discharged wastewater from its operations into waters of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

21. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA issued to Defendant NPDES Permit No. TX0009148 (hereinafter "the Permit") which became effective October 1, 1995 and remained in effect until January 29, 2007.

22. The Permit authorized the discharge from the Borger refinery, via Outfalls 001 through 016 (inclusive), of specified qualities and quantities of effluent to receiving waters, including unnamed tributaries of Dixon Creek, Patton Creek, and the Canadian River, all of which receiving waters are waters of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

23. The outfalls identified above in Paragraph 22 are "point sources" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Parts III.C and III.D of the Permit require Defendant to sample and test its effluent and monitor its compliance with Permit conditions according to specific procedures in order to determine the Facility's compliance or noncompliance with the Permit and regulations. These parts of the Permit also require Defendant to file with EPA on a periodic basis certified Discharge Monitoring Reports ("DMRs") of the results of monitoring, and Noncompliance Reports when appropriate. These parts of the Permit require that each DMR filing be signed by a responsible executor or authorized agent of Defendant, and that the executor or agent certifies by

his or her signature that the reports are accurate. These requirements have been operative since the effective date of the Permit (October 1, 1995) and remained in force throughout the term of the Permit.

25. Part I.A of the Permit places certain limitations on the quantity and quality of effluent discharged by Defendant, including numerical limitations governing daily and weekly minimums and maximums, and daily and monthly average amounts, of the effluent characteristics for specified pollutants at specified outfalls, including, inter alia, Whole Effluent Toxicity ("WET") and selenium. These requirements have been operative since the effective date of the Permit (October 1, 1995) and remained in force throughout the term of the Permit.

CLAIM FOR RELIEF

26. Paragraphs 1-25 are realleged and incorporated herein by reference.

27. During the period from at least 1999 and continuing through the term of the Permit, pursuant to the requirements of the Permit, Defendant submitted to the EPA and to the State of Texas certified DMRs that contained the results of Defendant's analysis of its discharges from the Borger refinery facility. These DMRs show that, on over 2000 occasions during the period from 1999 and continuing through September 2006, Defendant discharged pollutants into waters of the United States in violation of effluent limitations for WET and/or selenium.

28. Each day of Defendant's discharge of each pollutant in excess or in violation of the effluent limits authorized in the Permit constitutes a separate violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

29. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to

commence a civil action for injunctive relief and civil penalties whenever any person has violated Section 301 of the CWA, 33 U.S.C. § 1311, or has violated any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

30. Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant is subject to a civil penalty not to exceed \$27,500 for each day of each violation of its Permit and the CWA occurring after January 30, 1997 through March 15, 2004, and not to exceed \$32,500 for each day of such violation occurring after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, enjoin Defendant from any further violations of the CWA, by ordering compliance with the CWA;
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, assess civil penalties against Defendant for violations of the CWA, as permitted by law, up to the date of judgment herein; and
3. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

DEBORAH A. GITIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard St., Suite 1050
San Francisco, CA 94105
MA Bar # 645126
Phone: (415) 744-6488
Fax: (415) 744-6476
Email: d

RICHARD B. ROPER
United States Attorney

D. GORDON BRYANT
Assistant United States Attorney
Northern District of Texas

OF COUNSEL FOR THE UNITED STATES:

YERUSHA BEAVER
Assistant Regional Counsel (6RC-EW)
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, TX 75202-2733

KELLY KACZKA BRANTNER
Attorney Advisor
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
MC 2243A Room 3120A
Washington, DC 20460

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2008, a true and accurate original or copy of the following documents were served on the counsel identified below by Federal Express overnight mail: (1) Complaint with civil cover sheet; (2) Consent Decree; and (3) Notice of Lodging Consent Decree; all in the matter of United States v. ConocoPhillips Co.

David D. Duncan
Senior Counsel
ConocoPhillips Company
600 North Dairy Ashford
Houston, TX 77079

Bradley F. Stuebing (c/o David D. Duncan)
Senior Counsel
ConocoPhillips Company
600 North Dairy Ashford
Houston, TX 77079

Deborah A. Gitin